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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.697 OF 2005
IN
SUMMARY SUIT NO.2355 OF 2005

Abhishek Suresh Singh).. Plaintiff

Versus

Raj Karan Singh).. Defendant

Mr.R.S. Champawat for the Plaintiff.

Mr.R.P. Oza i/b.Sunil Singh for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 24TH MARCH 2006

P.C.:

. This Summons for Judgement has been taken out in respect of the Suit filed for recovery of an amount of Rs.15,00,000/-. An agreement to provide a loan by the Plaintiff to the Defendant was entered into between the parties on 22nd August 2002. Clause 2 of the Agreement indicates that Rs.15,00,000/- was paid in instalments by way of loan to the Defendant. Four instalments were paid by cheques and the first instalment was paid in cash. These amounts have not been repaid, according to the Plaintiff.

2. Reply to the Summons for Judgement has been filed contending that the Suit is not maintainable as a Summary Suit as this is a Suit for accounts. It is also contended that Rs.4,00,000/- has been returned to the

Plaintiff from the principal amount. Defendant has also denied receipt of Rs.3,50,000/- by cash and contends that Rs.11,50,000/- which was invested by the Plaintiff with the Defendant in shares. No loan was advanced by the Plaintiff. A Bank statement has been produced which indicates that some amounts were debited from the account of the Defendant in the name of the Plaintiff. Surprisingly, however, these amounts which, according to the Defendant have been debited from the particular account, are debited on the very day or the next day on which the Plaintiff has paid amounts under the loan agreement. The other defences raised by the Defendant are untenable.

3. However, with a view to give the Defendant an opportunity to defend the Suit, conditional leave granted to the Defendant on the Defendant depositing a sum of Rs.11,50,000/- within twelve weeks from today, failing which the Plaintiff will be entitled to a decree.

4. If the Defendant deposits the amount as aforesaid, the Prothonotary & Senior Master to invest the same in a Fixed Deposit of a Nationalised Bank initially for a period of three years, to be renewed thereafter till the pendency of the Suit. The Suit shall then be transferred to the list of Commercial Causes.